

Paul Fellows

Thank you for providing the opportunity to contribute supplemental information, not presented at the FTC Spam Forum.

The following information and suggested SPAM control solutions are from my reply to the contributions of Washington State Attorney General Christine O. Gregoire on Day One of the SPAM Forum. My area of expertise concerning this subject comes from my current experience as an IT Manager in a medium sized business (250-300 employees). My company is based in Washington State but also has offices in other states, so a multi state solution is most important to us.

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Dear Ms. Gregoire-

I'm writing to thank you for your participation in the FTC conference on SPAM last week. Your outspoken opinions about the rights of e-mail recipients, be they individuals or companies, is very much appreciated. I also share your concern that pending Federal legislation will actually remove some of the teeth already built in to existing State laws.

As an IT Manager, I'm extremely frustrated about the discussion, so far, and here's why - - -

The solution MUST be at the "desktop" because the nature of e-mail is that it is personal. The recipient MUST have the final say on what is received. Also, the nature of the Internet is that it is open for people to use in any way they wish. If regulation takes over the Internet, we will also regulate innovation out of existence. The Internet is a more fragile place than many legislators seem to realize.

Most of the SPAM problem is due to technology which has caused unintended consequences. The fact that it's easier to send great amounts of e-mail at, low cost, while it is very difficult to stop (relatively) small amounts of it, at a high cost to individuals, is the heart of the problem. We need to balance this in favor of the recipients while not strangling the rights of businesses to make offers.

I am in agreement that legislation should continue to go after fraud but the fraud of e-mail has become very nuanced and I don't believe there is any hope of laws stopping things which can be claimed to be mistakes or technological breakdowns. An example is the classic "Opt Out" concept. I'd like to point out to you that this popular concept, which is bandied about in every discussion of SPAM, is one of the most fraudulently used and impossible to regulate ideas available. It was embraced by the SPAM industry exactly because it's impossible to prove whether an opt out request has actually been promulgated. Further more, it's common knowledge in the IT Community that by clicking on an Opt Out link the end user is almost 100 percent assured of having his or her e-mail address automatically sent to dozens of other "hit lists". Ms. Gregoire, I really don't think any legislator wants his or her name on legislation that will actually

make people's lives 100 percent worse!

Opt Out must be taken off the table! Every e-mail SPAM-ster is hoping it will become law!

This SPAM debate is typical - - - between business concerns and the privacy needed by individuals. However, the harm being done to individuals, in this case, is also affecting businesses. The hundreds of millions of dollars of lost productivity (not directly showing on the Balance sheet) and the decline in on-line transactions is silently harming our economy.

First of all, consumers should feel safe from the harassment of SPAM on the Internet. Currently every transaction carries the risk of dozens of additional unwanted messages. It's a wonder that Internet commerce isn't totally shut down by now!

Fundamentally, I believe businesses should have the right to make offers over the Internet. Here's how it should work - - -

1) Each business that communicates a solicitation of any kind over the Internet must include a unique number. It can be their Business License number or some other number already available publically in each state. If it's a business license number the AGs of all the states would have to agree to make sure those numbers are available on the Internet at their various State web sites.

This would also have the added affect of making home businesses and hobby businesses have to get a business license. Hopefully, this would increase revenue. I also favor an Internet use fee added to business licenses which would be collected by the municipalities but go to the state AGs to help maintain a license server and some oversight.

2) An < Opt In > law would be legislated nationally: How it would work is that every business would have a right to solicit anyone on the Internet through e-mail. However, they could only solicit once (it could be once ever or, to make it fairer, once a year). If the recipient DID NOT RESPOND (no interest generated - a term which may be defined for this case - interest is the specific taking of action by replying to a solicitation), no further messages may be sent to that recipient. Simple.

If the recipient receives another message from the same sender and they have not responded to the previous message they may take action in several ways. They may report the sender to the State AG. By submitting two or more e-mails from the sender to the State AGs office the recipient would have to do no more. The sender goes on a list which may be used to filter their messages at corporate or office system levels. If they have more than a few complaints, they are out of business. Each state could set their own thresholds for the number of complaints. It would be possible to be "blacklisted" in one state but not another. Also, offenders should have the right to appeal and get a second chance.

3) Each state would maintain a server with the license numbers of the offenders listed. Filtering software can easily query for those numbers and filter at corporate or office system level. This will allow businesses, such as mine, to clean those messages at the front door. Again the user has the control and may decide to use the filtering information, or not.

4) Senders from outside the US would need to add the word < ADV: > to their subject line or apply specifically to each state where they wished to do business. The fees should be nominal and a license to do Internet business could be available over the Internet. By the way, by setting up this simple system, the states could collect transaction or sales taxes even from off shore businesses. If a business is delinquent they get put on the server. It's that simple.

The added advantage of this system is that it is self regulating, does not put undue onus on small businesses or end users. It also allows individuals, special organizations like church groups and scouts to send clustered messages without being filtered. It also preserves the privacy of everyone!

As you may know, most good e-mail programs have filtering rule making built in. As an IT Manager I have opted to help the 20% of my company who are having problems learn how to correctly use filtering, at their desktop, by providing good software, support and training. I believe that system level filtering generally is a very bad idea if it's based on broad, generalized rules. People depend on e-mail too much these days to have it become unreliable because of arbitrary filtering algorithms at the e-mail server.

Ms. Gregoire, you must use all means possible to be sure these aspects of the problem are dealt with. Too often legislators simply want the public to know they have "done something (anything)" to help. We can look to the legislation created to "do something" called the Patriot Act to realize that the inclination of legislators to wait until it's almost too late and then to pass legislation to "look good" is so often the norm these days. If this happens with SPAM, the result could be the unintended consequence of the problem getting worse while also limiting the use of the Internet in unexpected ways harmful to commerce.

The only way this problem will be solved is if legislation puts control into the hands of the individual recipient and the states use the simple technology already available to blacklist offenders. Threats of fines and imprisonment will not work.

By the way, the idea that the average individual or company should be empowered to "go after" SPAM-sters, is absurd. It creates a vigilante like system, like the 18 year old "bounty hunter" system suggested by Rep. Zoe Lofgren of California. People and companies typically do not have the time to do the regulatory work the government should do, but can't do. We must be realistic about the fact that any law relying on a regulatory function of government will not work because of lack of resources. Let the people with the most vested interest - - - the end users - - - have the tools to solve their problem. What needs to be put in place is very simple, something which works like caller ID is understandable to most people. A Name Server that any State IT department can throw up in a couple hours and costs little to maintain, is an attractive solution. It's technology controlling technology, with people in control, a nice balance.

Again, thanks for your "out in front" effort to control the SPAM problem.

Respectfully,

Paul Fellows